



Scott Michael Mishkin, PC ATTORNEYS AND COUNSELORS AT LAW

Scott Michael Mishkin, Esq.

September 20, 2016

Via Overnight Fed Ex

Liz Brogan
Owner
Smithtown Volkswagen
530 East Jericho Turnpike
St. James, New York 11780

Re: Wayne Rice v. Smithtown Volkswagen, Joe Bindels & Liz Brogan

***For Settlement Purposes Only. Not To Be Used in The Litigation of This Matter or
During Any Administrative Proceedings***

Ms. Brogan:

Pretty shocking and disgusting isn't it?

How did you feel when you opened this envelope and saw your Brother, the majority share holder and owner of Smithtown Volkswagen naked and erect with his legs spread and holding his erect penis and the tip of his penis after ejaculation?

Appalled? Humiliated? Embarrassed? Violated? Sick to your stomach?

Gross isn't it Ms. Brogan? Don't you feel something should be immediately done about this?

Mr. Rice was shocked and humiliated by this severe sexual harassment and confronted Mr. Bindels and asked him why he sent him naked, erect, and ejaculated pictures of himself.

It was because Mr. Bindels wanted to have sex with Mr. Rice and when Mr. Rice refused and complained to Mr. Bindels' that he would not submit to his sexual advances and had no interest and to stop, Mr. Rice was terminated for no legitimate business reason.

Here it was the owner of Smithtown Volkswagen, sexually harassing Mr. Rice with such disgusting photographs and after Mr. Rice formally complained to him of it, the terms and conditions of his employment changed and his work environment became permeated with hostility, ending with the ultimate adverse action against him of termination.

One Suffolk Square
Suite 240
Islandia, New York 11749
Tel. 631-234-1154
Fax. 631-234-5048

Thirty-Four Pantigo Road
East Hampton, New York 11937
Tel. 631-234-1154
Fax. 631-234-5048





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I am confident that Volkswagen of America Inc.'s franchise agreement does not provide for its owners to send erect pictures of themselves ejaculating to its employees and that remedial measures are part of your franchise agreement.

Trust me, when Mr. Bindels' pornographic images are placed on the screen in Federal Court as Plaintiff's Exhibit A, coupled with the chronology of events that he engaged in towards Mr. Rice and his ultimate adverse action of terminating Mr. Rice for not submitted to having sex with him, a Jury will find for Mr. Rice's cause of action for sexual harassment, and damages will be awarded.

As you are aware, Mr. Rice began his highly dedicated career at Smithtown Volkswagen on September 21, 2015, as its General Sales Manager with the position responsibilities including overseeing and directly involved in every aspect of new and used car sales.

Mr. Rice ordered all inventory, and gave all pricing to salespersons for all deals they were working. When a salesperson could not close a deal, he went in and achieved that goal for Smithtown Volkswagen.

Mr. Rice oversaw the preparation and delivery for all sales as well as its finance department. He also was responsible for the appraisal of all used cars, and handled any issues with Volkswagen of America Inc.'s factory.

He performed all of the administration work for Volkswagen America Inc.'s Higher Gear-which was Smithtown Volkswagen's customer retention system, V-Auto and did all the administration work for Smithtown Volkswagen's internet site, and also Auto Alert, He hired all personnel that had anything to do with sales and reported all the cars sold.

On September 4, 2016, Mr. Rice was wrongfully terminated in retaliation of his repeatedly denying Mr. Bindels ongoing sexual advances towards and his repeatedly refusing to have sex with Mr. Bindels and to stop sexually harassing him.

The chronology of events demonstrate that on or about March 2016, Mr. Bindels sent Mr. Rice naked and erect pictures of himself with his legs spread and holding his erect penis, playing with his penis and testicles along with his semen on the head of his penis after ejaculation, via Smithtown VW e-mail to Mr. Rice's e-mail account, with the intent to have sex with Mr. Rice, and when Mr. Rice repeatedly refused, the terms and conditions of Mr. Rice's employment changed and he was terminated.

Approximately a week after Mr. Bindels showed Mr. Rice his erect penis and playing with himself and then ejaculating, he went into Mr. Rice's office and he asked him if he





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liked the pictures he sent.

Mr. Rice made it unequivocally clear that he did not, and that he did not want to have sex with him and to stop the harassment.

On or about April, 2016, Mr. Bindels approached Mr. Rice again and asked if he liked his naked photographs and told Mr. Rice that "we" should get together and have some fun.

Mr. Rice was outraged and told Mr. Bindels to stop.

At that point, Mr. Rice believed that he made it clear to Mr. Bindels that he wanted his sexual harassment against him to stop and that he was not going to have sex with him.

Mr. Bindels was not finished and continued to sexually harass Mr. Rice and in fact conditioned the terms of Mr. Rice's employment at Smithtown Volkswagen on submitting to having sex with him when in June 2016, he told Mr. Rice that his job at Smithtown Volkswagen would be secure in his future if he would have sex with him.

Mr. Rice refused and told Mr. Bindels to stop the sexually harassment towards him.

However, Mr. Bindels did not stop his sexual harassment towards Mr. Rice.

On August 24, 2016, Mr. Bindels told Mr. Rice that he would make more money at Smithtown Volkswagen and have a secure future at Smithtown Volkswagen if he had sex with him.

Mr. Rice told Mr. Bindels he was a heterosexual and that he had no intention of having sex with him and to stop sexually harassing him.

Then ten (10) days later, Mr. Bindels terminated Mr. Rice.

On September 4, 2016, Mr. Rice had a scheduled day off. As he was about to walk into Church, he received a telephone call from David Hovell who told him that "they" were going to go in a different direction, and that his services were no longer needed.

Mr. Hovell was hired by Mr. Bindels in August 2016, as a General Manager, and to replace Mr. Rice after Mr. Rice repeatedly refused to have sex with Mr. Bindels and told Mr. Bindels to stop sexually harassing him.





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Mr. Rice questioned Mr. Hovell as to why he was being fired as he was in a state of shock, and Mr. Hovell stated: "Joe no longer wants you here."

Performance was clearly not the issue as August of 2016 was one of the more profitable months Smithtown Volkswagen had in the last year and the fact, as will be demonstrated to a Federal Jury, his work was exemplary and his dedication to Smithtown Volkswagen was insurmountable.

Mr. Rice's total earned income at Smithtown Volkswagen for the Eleven (11) months prior to being wrongfully terminated because he did not submit to Mr. Bindels sexual advances despite providing Mr. Rice with naked pictures of his erect penis and his legs spread and playing with himself and of course that close up shot of his semen dripping down the head of his penis after ejaculation, was One Hundred Thirty Nine Thousand Three Hundred Five (\$139,305.04) Dollars and Four cents based on Eleven (11) months, which includes spin money from Volkswagen. Based on these figures, Mr. Rice would have earned One Hundred Fifty One Thousand Nine Hundred Sixty Nine (\$151,969.08) Dollars and Eight Cents for the entire Twelve (12) month period.

Before Mr. Rice commences his Title VII action against Smithtown Volkswagen and Volkswagen America Inc. and then commences his Federal Action with pendent State claims against same as well as Mr. Bindels and yourself, he puts forth the following good faith demand for Three (3) years of salary in order to amicably resolve this matter at this time.

In exchange for same, Mr. Rice will execute a confidential settlement and general release agreement.

Please have you counsel contact me upon your receipt of this correspondence.

Be guided accordingly.

Scott Michael Mishkin
Enclosures

